

### **REMARKS**

Claims 1-43 were pending and subject to a species restriction. Applicants have canceled claims 7-8, 14-16, 18-23, 27 and 38-43 without prejudice, and added new claims 44-56. Applicants also amended (a) claims 1, 6, 9, 13, 24, 28-34 and 37 and (b) withdrawn claims 11, 25-26, 28-29, 51 and 53. Accordingly, claims 1-6, 9-13, 17, 24-26, 28-37 and 44-56 are pending.

Applicants have canceled claims 7-8, 14-16, 18-23, 27 and 38-43 in order to reduce additional claim fees in view of new claims 44-56. However, Applicants reserve the right to represent the additional species recited in the canceled claims upon indication of an allowable generic claim.

The amendment to claims 6, 13 and 37 merely corrects a typographical error by amending "CTLA4-Ig" to "a CTLA4Ig". The amendment to claim 30 merely corrects a typographical error by amending "admitnistered" to "administered". The amendment to claims 24 and 28-33 merely corrects the dependency of the claim. No new matter is added.

Support for amended claims 1, 9 and 34 and new claims 44-56 may be found in the application as originally filed. Accordingly, these changes do not involve new matter and Applicants respectfully request entry of these changes.

Support for amended claim 1 may be found in the specification at page 6, lines 12-14, and page 7, lines 13-16.

Support for amended claim 9 may be found in the specification at page 25, lines 18-21, page 43, line 28 to page 44, line 2 and in originally filed claim 34.

Support for amended claim 34 in originally filed claim 34.

Support for new claim 44 may be found in the specification at page 20, line 27 to page 21, line 21.

Support for new claim 45 may be found in the specification at page 35, lines 6-9 and in Figure 20.

Support for new claim 46 may be found in the specification in Figure 20.

Support for new claim 47 may be found in the specification at page 19, lines 16-19.

Support for new claim 48 may be found in the specification at page 19, lines 16-19.

Support for new claim 49 may be found in the specification in Figure 15.

Support for new claim 50 may be found in the specification in Figure 15.

Support for new claim 51 may be found in the specification at page 28, lines 23-27.

Support for new claim 52 may be found in the specification at page 28, lines 23-27, and page 29, lines 21-29.

Support for new claim 53 may be found in the specification at page 29, lines 21-29.

Support for new claim 54 may be found in the specification at page 29, lines 21-29 and in originally filed claim 6.

Support for new claim 55 may be found in the specification at page 29, lines 21-29, page 20, lines 27-31, page 21, lines 1-12 and in originally filed claim 42.

Support for new claim 56 may be found in the specification at page 29, lines 21-29, page 19, lines 6-19, page 20, lines 27-31, page 21, lines 1-12 and in originally filed claim 42.

### **SPECIES ELECTION REQUIREMENT**

In the Office Action, the Office states that claim 1 is deemed generic and is requiring election of a species if no generic claim is found allowable. Applicants hereby confirm election of the following, with traverse:

1. The alkylating agent is busulfan;
2. The first ligand is a soluble CTLA4;
3. The second ligand is an anti-CD40 antibody; and
4. The targeted condition is solid organ or tissue/cellular transplant.

As with all species election, Applicants understand that the claims will be restricted to the species if no generic claim is held allowable.

Reconsideration of the Election of Species is requested for the following reasons:

### **TRAVERSAL**

The claimed invention is based on the discovery that solid organ transplant rejection can be reduced or inhibited, by using an alkylating agent and T-cell depleted bone marrow cells. In additional embodiments, the claimed methods further comprise the use of a first ligand which interferes with the binding of the CD28 antigen to either CD80 or CD86 and a second ligand which interferes with the binding of the CD154 antigen to CD40 antigen.

The first ligand can be any of the following:

- a. Soluble CTLA4,
- b. CD28,
- c. B7-1,
- d. B7-2,
- e. B7-3,
- f. Anti-B7-1 antibody,
- g. Anti-B7-2 antibody,
- h. Anti B7-3 antibody,
- i. Anti-CTLA4 antibody, or
- j. Anti-CD28 antibody.

New claims 44-50 are embodiments of a first ligand and belong to elected species of soluble CTLA4.

The second ligand can be any of the following:

- a. Anti-CD154 antibody
- b. CD40, or
- c. A ligand for CD40, for example, a soluble CD154 or an anti-CD40 antibody.

Applicants point out that with regard to the second ligand, Applicants have added new claims 51-56 which belong to applicants' newly created and elected choice (c) above.

The species restriction should be withdrawn because search of the art with regard to the claimed methods would not place an undue burden on the Examiner. A search of prior art in regard to the use of any of the first ligands should reveal whether any prior art exists as to use of the other members of the group. Similarly, search of the prior art in regard to use of any of the second ligands should reveal whether any prior art exists as to use of the other members of the group. Moreover, separate prosecution of these claims would be unnecessarily duplicative and thus wasteful of Patent Office resources. Therefore under MPEP Section 808.01(a) the instant claims do not require restriction.

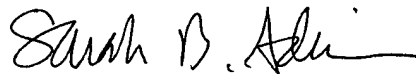
**Conclusion**

Applicants submit that the claims should properly be examined together for the reasons discussed above, and respectfully request the Examiner reconsider and withdraw the Restriction Requirement.

If a telephone interview would be of assistance in advancing the prosecution of the subject application, Applicants undersigned attorney invites the Examiner to telephone her at the number provided below.

No fee is deemed necessary in connection with the filing of this Amendment. If any fee is necessary, the Patent Office is authorized to charge any additional fee to Deposit Account No. 50-0306.

Respectfully submitted,



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